IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

WA.No. 885 of 2006()

AGAINST THE JUDGMENT DATED 05.11.2005 IN O.P. 1062 OF 1997.

APPELLANTS/RESPONDENTS:
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1. THE BOARD OF REVENUE (TAXES),
   THIRUVANANTHAPURAM, REP. BY ITS SECRETARY.

2. THE INSPECTING ASSISTANT COMMISSIONER OF
   SALES TAX, PATHANAMTHITTA.

3. THE INTELLIGENCE OFFICER,
   SALES TAX, PATHANAMTHITTA.

4. THE STATE OF KERALA,
   REP. BY THE CHIEF SECRETARY, SECRETARIAT,
   THIRUVANANTHAPURAM.

BY SPECIAL GOVERNMENT PLEADER FOR TAXES SHRI V.V. ASOKAN.

RESPONDENT/ PETITIONER:

S. UNNIKRISHNAN,
SREEDHAR JEWELLERY, ADOOR.

BY

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

W.A. NO. 885 OF 2006

Dated this the 8th June, 2007

JUDGMENT

H.L.DATTU, C.J.

Questioning the correctness or otherwise of the orders passed by the learned single Judge in O.P.No,.1062 of 1997, the Revenue is before us in this appeal.

2. The facts in brief are:

Petitioner in the original petition is a dealer registered under the provisions of the Kerala General Sales Tax Act. He is a dealer in jewellery. His place of business was inspected by the Intelligence Officer, the third respondent in the original petition, on 5.3.1994 and on such inspection, he noticed that the assessee had written the Day Book only up to 3.3.1994 and also that there was excess jewellery which was not reflected in the books of accounts maintained. Being of the opinion that the assessee has committed an offence under the provisions of the Act, had issued a show cause notice under Section 45A(1)(b) of the Act, dated 16.4.1994, directing the petitioner/respondent herein to show cause why penalty as provided under Section 45A should not be imposed.

3. The assessee had filed a detailed reply dated 21.4.1994. In that, he had stated that a relative of the assessee had deposited certain quantity of gold jewellery under a particular scheme.

4. The inspecting authority, not being satisfied with the explanation so offered, had directed the petitioner/assessee to produce the person who had

deposited the jewellery under the scheme. Pursuant to the direction so issued, the assessee had examined one Smt.Chandini Nair, and also had produced the affidavit of Smt.Chandini Nair in support of the oral evidence.

5. The inspecting authority, not being satisfied either with the explanation or with the evidence adduced by the assessee, had proceeded to impose penalty of Rs.19,200/- (Rupees Nineteen Thousand and Two Hundred only) under Section 45A of the Act.

6. The assessee, being aggrieved by the said order, had filed the revision petition under Section 45A(3) of the Act. The revisional authority, after accepting part of the explanation of the assessee, had reduced the penalty to a sum of Rs.1,690/- by its order dated 6.3.1996.

7. The Commissioner of Sales Tax, exercising his powers under Section 45A(5) of the Act, had initiated suo motu proceedings by issuing a show cause notice to the assessee to show cause why the orders passed by the revisional authority dated 6.3.1996 should not be set aside and the orders passed by the third respondent – Intelligence Officer imposing penalty of Rs.19,200/- should not be restored. The assessee had replied to the said show cause notice. The Commissioner, after considering the reply so filed by the assessee, has passed the order dated 19.11.1996, confirming the proposal made in the show cause notice. Aggrieved by the said order, the assessee was before this Court in O.P.No.1062 of 1997.

8. The learned Judge by its judgment dated 5.11.2005 has allowed the

original petition and has quashed the orders passed by the Commissioner of Commercial Tax dated 19.11.1996. It is the correctness or otherwise of the said judgment passed by the learned single Judge is the subject matter of this writ appeal.

9. Sri.V.V.Ashokan, counsel appearing for the Revenue would submit that the learned single Judge was not justified in setting aside the orders passed by the revisional authority dated 19.11.1996.

10. In the instant case, to the notice issued under Section 45A(1)(b) of the Act by the inspecting authority, the assessee had filed his detailed explanation and also had adduced the evidence of Smt.Chandini Nair. The assessee had also produced the affidavit filed by Smt.Chandini Nair, who had deposited certain quantity of jewellery with the assessee under a particular scheme. The assessing authority did not have any other material before him to come to a conclusion that the version of Smt.Chandini Nair cannot be believed. The assessing authority had proceeded on a mere assumption that there was no reason for Smt.Chandini Nair to deposit certain quantity of jewellery with the assessee under a particular scheme.

11. In fact, the revisional authority in the revision filed by the assessee had accepted the explanation offered by the assessee and also the affidavit filed by Smt.Chandini Nair and had reduced the penalty from Rs.19,200/- imposed by the inspecting authority to a sum of Rs.1,690/-. In a case of this nature, in our opinion, there was no reason for the revisional authority to have taken suo motu revisional proceedings. This was a case which was decided purely on facts by the revisional

authority. Only if the order passed by the revisional authority is of such a nature that it is erroneous and prejudicial to the interest of the Revenue, the revisional authority could have initiated proceedings under Section 45A(5) of the Act. Taking these aspects of the matter into consideration the learned single Judge, in our opinion, was justified in setting aside the orders passed by the revisional authority (Ext.P4), dated 19.11.1996. The findings and conclusions reached by the learned single Judge, in our opinion, are neither erroneous nor arbitrary. Therefore, interference of the said order is not called for. Accordingly, the appeal requires to be rejected and it is rejected.

Ordered accordingly.

(H.L. DATTU)
Chief Justice

(K.T. SANKARAN)
Judge

ahz/DK